

**OPEN RECORDS AND MEETINGS OPINION
2005-O-10**

DATE ISSUED: June 9, 2005

ISSUED TO: Wilton Rural Ambulance District

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from John Burck asking whether the Wilton Rural Ambulance District violated N.D.C.C. § 44-04-20 by failing to sufficiently notice a board meeting and N.D.C.C. § 44-04-21 by failing to keep minutes that met the minimum requirements of the law.

FACTS PRESENTED

The Wilton Rural Ambulance District (District) covers approximately 500 square miles in both McLean and Burleigh Counties. It has a seven member board that meets monthly in addition to holding an annual meeting during which officers are elected. The board usually meets the third Monday of each month. Recently, however, meetings have not been on a regular schedule due to scheduling conflicts. All meetings are held at the District office in Wilton. The office is open during the week. The board president spends approximately 20 hours a week at the office during normal working hours.

At approximately 1:00 p.m. on March 24 Mr. Burck, who was at the District office, asked the District president when the "board meeting" was going to be held. Due to previous conversations with Mr. Burck, the president believed Mr. Burck was asking about the annual meeting at which elections are held. The president told him it was to be rescheduled, that notice would be published in the local newspaper two weeks prior to the meeting, and that Mr. Burck would be personally notified of the meeting.

At approximately 3:30 p.m. on March 24, a District board member suggested to the board president that the regular monthly meeting be held that evening because the president would not be available for the remainder of the month. At 4:30 p.m. it was determined that a quorum would be available for a meeting that evening at 7:00 p.m. At approximately that same time, notices were posted on a bulletin board located just inside the District building door, written on a white board located in the meeting room, and filed with the Wilton city auditor.

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Shortly after the March 24 meeting began, Mr. Burck arrived at the District building. He asked why a notice of the meeting had not been posted when he was at the District's office earlier that day. The board explained that the meeting was scheduled late that afternoon. Mr. Burck spoke at the meeting and asked to be notified of the annual meeting.

Mr. Burck alleges that the March 24 meeting was intentionally kept secret by failing to properly notice the meeting. He also alleges that he is unable to tell how each member voted at the meeting by reading the minutes because the minutes were not kept in accordance with the law.

ISSUES

1. Whether the District violated N.D.C.C. § 44-04-20 by failing to sufficiently notice a board meeting.
2. Whether the District minutes are consistent with N.D.C.C. § 44-04-21.

ANALYSES

Issue One:

North Dakota Century Code chapter 11-28.3 provides the process for creating, maintaining, and dissolving rural ambulance service districts. This chapter provides for the election of a board of directors and an annual regular meeting of electors who reside in the District. N.D.C.C. §§ 11-28.3-06, 11-28.3-07. Rural ambulance service districts and the boards that serve them are created by statute to exercise public authority or perform a governmental function. They are therefore subject to the state's open records and meetings laws. See N.D.C.C. § 44-04-17.1(12)(b).

Unless otherwise provided by law, public notice must be provided in advance of all meetings governed by the open meetings laws. N.D.C.C. § 44-04-20(1). The notice must be posted in the governing body's main office and at the meeting location on the meeting day. N.D.C.C. § 44-04-20(4). It must also be filed with the county auditor unless all the notice information was previously included in the governing body's annual schedule. Id. (other than state-level and city-level bodies, notice must be filed with the county auditor). Notice must be provided to anyone requesting such information. N.D.C.C. § 44-04-20(5). In addition, for special or emergency meetings, the public entity must notify its official newspaper, if any, and all representatives of the media who have requested to be notified. N.D.C.C. § 44-04-20(6).

Mr. Burck alleges that the District board intentionally failed to give sufficient notice in order to keep the meeting a secret from him. According to the District board president, the meeting was noticed in the same way all of its monthly meetings are noticed. The District

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board does not file an annual schedule of regular meetings with the county auditor. Based on the information provided to this office from the District, it does not appear that the board held a secret meeting or intentionally tried to keep Mr. Burck out of the meeting.¹ There are problems, however, with how the governing body provided notice.

Mr. Burck was not given notice personally because the District president thought he wanted notice of the annual meeting at which elections are held rather than monthly meeting notices. Notice was posted at the main office and on a white board in the meeting room. Notice was not given to the official newspaper because the District does not have an official newspaper.² Although notice was filed with the Wilton city auditor, a rural ambulance service district is not a city-level entity. Rather, the District serves both Burleigh and McLean counties.

In a 1998 opinion to the Southwest Multi-County Correction Center, this office explained that the purpose of requiring the notice to be filed with the county auditor is to have a central location for people to find out about all public meetings affecting the county. N.D.A.G. 98-O-04. The opinion explained that residents of one county represented by a multi-county entity were entitled to the same notice of public meetings as the residents of any other participating county. *Id.* Because the District serves territory in both Burleigh and McLean Counties, the board should have filed its meeting notices in the county auditor's office of each participating county.³ Because it did not do so, it is my opinion that sufficient notice was not provided for the March 24, 2005 monthly meeting.

Issue Two:

Minutes must be kept of all open meetings. N.D.C.C. § 44-04-21(2). At a minimum, the minutes must include:

- a. The names of the members attending the meeting;
- b. The date and time the meeting was called to order and adjourned;

¹ Mr. Burck alleges that the building is not always open to the public so the notices posted inside the building cannot be seen by the public. The building was open all day, however, on March 24, the day the meeting notice was posted and the building was open when Mr. Burck arrived at the meeting. He was not barred from entering the meeting room; on the contrary, he was allowed to address the board.

² On May 4, 2005, H.B. 1286 became law. It provides that if a public entity does not have an official newspaper, it must notify the official newspaper of the county where its principal office or mailing address is located. N.D.C.C. § 44-04-20(6).

³ Although the law does not require filing notice with the city auditor, the District may choose to continue doing so, in addition to filing notices with the Burleigh and McLean county auditors.

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- c. A list of topics discussed regarding public business;
- d. A description of each motion made at the meeting and whether the motion was seconded;
- e. The results of every vote taken at the meeting; and
- f. The vote of each member on every recorded roll call vote.

N.D.C.C. § 44-04-21(2). All nonprocedural votes must be recorded roll call votes, with the votes of each member being made public at the open meeting. N.D.C.C. § 44-04-21(1).

If minutes include the information required by law, a member of the public should be able to determine how an individual board member voted on all nonprocedural matters by reading the minutes. Mr. Burck alleges that he is unable to determine how the individual board members voted. The March 24, 2005, minutes were reviewed by this office.

According to the board president, no roll call votes or results are set out in the minutes because roll call votes are not taken at the meetings. Rather, the secretary asks all in favor to respond by saying "yes" or "no." The president indicated that most votes of the board result in an unanimous decision. The minutes reflect the votes by stating that "all agreed" or "motion carried." The president explained these terms are used interchangeably.

It is my opinion that the District board violated N.D.C.C. § 44-04-21(1) and (2) by failing to take roll call votes on nonprocedural matters and by failing to list the vote of each member on every recorded roll call vote.

CONCLUSION

1. It is my opinion that the District did not give sufficient notice of its March 24 meeting.
2. It is my opinion that the District violated N.D.C.C. § 44-04-21(1) & (2) by failing to take roll call votes on nonprocedural matters and by failing to list the vote of each member on every recorded roll call vote.

STEPS NEEDED TO REMEDY VIOLATIONS

The District board must file the notice of the March 24, 2005 meeting with the McLean and Burleigh County Auditors. If the board decides to resume a regular schedule of monthly meetings, that schedule should be filed with the county auditors. The District must also start filing its meeting notices in the county auditor's office of each participating county.

The minutes from the March 24 meeting must be supplemented to indicate the vote of each member on each nonprocedural matter voted upon. The minutes should be provided to Mr. Burck.

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Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2. N.D.C.C. §44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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